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**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

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**SECOND NOTICE OF COMMENT PERIOD**

LSA Document #09-194

**DEVELOPMENT OF NEW RULES AT [329 IAC 11.7](#) CONCERNING REGISTRATION OF FACILITIES THAT USE INDUSTRIAL PROCESS WASTE OR COMMERCIAL SOLID WASTE AS AN ALTERNATIVE FUEL SOURCE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules at [329 IAC 11.7](#) concerning registration, storage and operational standards, closure, and financial assurance for facilities that use industrial process waste or commercial solid waste as an alternative fuel source.

By this notice, IDEM is soliciting public comment on the draft rule language. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**HISTORY**

First Notice of Comment Period: March 25, 2009, Indiana Register (DIN: [20090325-IR-329090194FNA](#)).

**CITATIONS AFFECTED:** [329 IAC 11.7](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

IDEM staff have been contacted regarding the burning of solid waste streams as a fuel to offset the burning of coal. Under the current solid waste rules such activity would either have to be regulated as a solid waste incinerator or a solid waste processing facility or granted an exemption from the solid waste processing rules under [329 IAC 11-3-1](#)(13) as a solid waste management activity that does not pose a threat to human health or the environment. None of these options are ideal as they represent, at one extreme, more regulatory burden than is needed and, at the other extreme, exemption from regulatory oversight. The purpose of this rulemaking is to develop a more appropriate regulatory tool for this activity that assures that best management practices are being utilized relative to the management of waste prior to burning without imposing excessive requirements that would hinder the beneficial use of waste materials as a fuel. The rule would also provide appropriate management practices for ash produced from the burning activity.

This rulemaking focuses on the storage and handling aspects of the waste utilized as fuel. Emission impacts from such burning are regulated by the Office of Air Quality and the Air Pollution Control Board.

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

The following element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is "not imposed under federal law" (NIFL elements).

NIFL Element (A) New rules at [329 IAC 11.7](#) concerning requiring registration, storage and operational standards, financial assurance, and closure for alternative fuel sources:

(1) None of the requirements of this draft rule are required under federal law. However, activities proposed to be regulated by this rule would, absent this rule, be regulated under the solid waste processing facilities rule at [329 IAC 11](#), which would have more extensive and costly permitting requirements. IDEM has encountered several operations in the state involving the use of solid waste as an alternative fuel source. While these operations represent a relatively low level of environmental threat, they currently fall under the "solid waste processing facility" definition at [329 IAC 11-2-43](#) and are therefore subject to permitting requirements that can place a significant financial burden on operations. To encourage the development of these facilities and also to protect public health and the environment, this rule proposes registration and management standards that will ensure good environmental practices while reducing the regulatory burden that would result from such facilities having to get a solid waste processing facility permit. But for these rules, there would be a higher cost to comply with the solid waste processing facility rules.

(2) There are no federal requirements for these operations. There is some fiscal impact associated with this rulemaking due to the cost of compliance with basic storage, operation, financial assurance, and closure requirements. However, the rulemaking provides relief to the regulated community from the requirement of obtaining a solid waste processing facility permit that costs \$12,150 every five years and \$2,000 every year for an operating fee paid to IDEM. In addition, there will be the costs of developing the permit application (\$2,500-\$25,000) and the cost of compliance (\$5,000-\$20,000). The cost for a surety bond as financial assurance under this draft rule will vary depending on the amount of waste handled and processed but the cost will be less than the cost of financial assurance under the permit rule at [329 IAC 11](#). A surety bond per

facility per year under the registration may cost \$500-\$5,000, depending on the amount of waste received by the facility and the standing of the facility. It is unknown at this time how many facilities will be registered under this rule. This rulemaking allows for the registration of facilities using solid wastes as alternative fuel at no cost. There is some cost of compliance for planning, operational requirements, financial assurance, and closure.

(3) The information used to develop this rule comes from IDEM's implementation of the existing solid waste processing facility program and information provided by some of the facilities that would be affected by the rule.

#### **Potential Fiscal Impact**

There is some fiscal impact associated with this rulemaking due to the cost of compliance with basic storage, operation, financial assurance, and closure requirements. However, the rulemaking provides relief to the regulated community from the requirement of obtaining a solid waste processing facility permit that costs \$12,150 every five years and \$2,000 every year for an operating fee paid to IDEM. In addition, there are the costs of developing the permit application (\$2,500-\$25,000), and the cost of compliance (\$5,000-\$20,000). It is unknown at this time how many facilities will be registered under this rule. This rulemaking allows for the registration of facilities using solid wastes as alternative fuel at no cost.

There is minimal fiscal impact on the agency in terms of costs to process the registrations, and, in fact, there is a cost savings in comparison to processing a permit application.

Comments on the potential fiscal impact of the rule are requested.

#### **Public Participation and Workgroup Information**

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Lynn West, Rules Development Section, Office of Legal Counsel at (317) 232-3593 or (800) 451-6021 (in Indiana).

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from March 25, 2009, through April 24, 2009, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments in response to the first notice of public comment period.

#### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#09-194(SWMB) (Alternative Fuel Rule)

Janet Pittman

Office of Legal Counsel

Indiana Department of Environmental Management

100 North Senate Avenue

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Indianapolis, IN 46204-2251

Hand delivered comments will be accepted by the receptionist on duty at the east reception desk on the thirteenth floor, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5970, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 232-8922.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by August 26, 2011.

Additional information regarding this action may be obtained from Lynn C. West, Rules Development Section, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).

#### **DRAFT RULE**

SECTION 1. [329 IAC 11.7](#) IS ADDED TO READ AS FOLLOWS:

#### **ARTICLE 11.7. ALTERNATIVE FUEL SOURCE**

##### **Rule 1. General Provisions**

##### **[329 IAC 11.7-1-1](#) Purpose**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2-1](#); [IC 36-9-30-35](#)

**Sec. 1. (a)** This article regulates facilities that burn up to thirty percent (30%) by weight of total fuel feed industrial process waste or commercial solid waste with a minimum fuel value of five thousand (5,000) BTUs per pound.

**(b)** This article replaces all solid waste processing standards and permitting requirements under [329 IAC 10](#) and [329 IAC 11](#) for a facility registered under this article.

*(Solid Waste Management Board; [329 IAC 11.7-1-1](#))*

#### **[329 IAC 11.7-1-2](#) Applicability**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 2.** This article applies to a facility described in section 1(a) of this rule that is accepting solid waste from off-site and doing any of the following:

- (1) Storing industrial process waste or commercial solid waste for use as an alternative fuel source.
- (2) Processing industrial process waste or commercial solid waste as an alternative fuel source.

*(Solid Waste Management Board; [329 IAC 11.7-1-2](#))*

#### **[329 IAC 11.7-1-3](#) Severability**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 3.** If any provision of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or application of this article that can be given effect without the invalid provision or application.

*(Solid Waste Management Board; [329 IAC 11.7-1-3](#))*

#### **[329 IAC 11.7-1-4](#) Acts prohibited**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 4.** No person who owns or operates a facility to which this article is applicable shall cause or allow the storage, containment, processing, or disposal of solid waste in a manner that creates a threat to human health or the environment, including the creation of:

- (1) a fire hazard;
- (2) a vector attraction;
- (3) air, land, or water pollution; or
- (4) other contamination.

*(Solid Waste Management Board; [329 IAC 11.7-1-4](#))*

#### **[329 IAC 11.7-1-5](#) Penalties**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 5. Penalties for violation of this article shall be governed by [IC 13-14](#) and [IC 13-30](#).**

*(Solid Waste Management Board; [329 IAC 11.7-1-5](#))*

**[329 IAC 11.7-1-6](#) Local approvals**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 6. The registration that is required by this article does not supersede or replace the need to obtain any local approvals.**

*(Solid Waste Management Board; [329 IAC 11.7-1-6](#))*

**[329 IAC 11.7-1-7](#) Commissioner approval**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 7. In this article, any approval that is given by the commissioner is based on protection of human health and the environment.**

*(Solid Waste Management Board; [329 IAC 11.7-1-7](#))*

**[329 IAC 11.7-1-8](#) Incorporations by reference material**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 8. In this article, references to federal regulations, laws, and state rules, including laws, regulations, and rules that are incorporated by reference, are to the version that is effective as of the effective date of this article.**

*(Solid Waste Management Board; [329 IAC 11.7-1-8](#))*

**Rule 2. Definitions**

**[329 IAC 11.7-2-1](#) Definitions**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-11-2](#); [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 1. The definitions in [IC 13-11-2](#) and [329 IAC 11-2](#) apply to this article unless a term is otherwise defined in this rule. The definitions in this rule apply throughout this article.**

*(Solid Waste Management Board; [329 IAC 11.7-2-1](#))*

**[329 IAC 11.7-2-2](#) "Alternative fuel" defined**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 2. "Alternative fuel" means a solid waste that is industrial process waste or commercial solid waste, such as manufactured wood waste, paper, plastic, tires, rubber, carpet, oil filter fluff, cosmetics, or**

corn seeds with a minimum fuel value of five thousand (5,000) BTUs per pound at the time the waste is introduced into the fuel combustion chamber.

(Solid Waste Management Board; [329 IAC 11.7-2-2](#))

**[329 IAC 11.7-2-3](#) "Closure" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 3. "Closure" means the activities to be completed at the registered facility at the end of solid waste acceptance, including the following:

- (1) Removal, proper processing, or disposal of all solid waste at the registered facility.
- (2) Notification to the commissioner.

(Solid Waste Management Board; [329 IAC 11.7-2-3](#))

**[329 IAC 11.7-2-4](#) "Commercial solid waste" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 4. "Commercial solid waste" has the meaning set forth in [329 IAC 10-2-32](#).

(Solid Waste Management Board; [329 IAC 11.7-2-4](#))

**[329 IAC 11.7-2-5](#) "Contingency action plan" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 5. "Contingency action plan" means a written course of action to be followed for emergency response in the event of an emergency that causes the release of contaminants into the environment or for the method or methods of waste management or disposal if the facility is unable to operate or process solid waste for twenty-four (24) hours or longer.

(Solid Waste Management Board; [329 IAC 11.7-2-5](#))

**[329 IAC 11.7-2-6](#) "Discard" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 6. "Discard" has the meaning set forth in [329 IAC 11-2-9.8](#).

(Solid Waste Management Board; [329 IAC 11.7-2-6](#))

**[329 IAC 11.7-2-7](#) "Disposal" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-11-2-57](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 7. "Disposal" has the meaning set forth in [IC 13-11-2-57](#). For purposes of this article, disposal must meet the requirements in [329 IAC 11.7-7-1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-7](#))

**[329 IAC 11.7-2-8](#) "Financial assurance" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 8. "Financial assurance" means, for purposes of this article, a bond acquired by the owner or operator of the registered facility in an amount sufficient to provide for:

- (1) remediation of contamination at the registered facility; and
- (2) closure of the registered facility.

(Solid Waste Management Board; [329 IAC 11.7-2-8](#))

**[329 IAC 11.7-2-9](#) "Generator" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 9. "Generator" means the person that discards solid waste regulated by this article.

(Solid Waste Management Board; [329 IAC 11.7-2-9](#))

**[329 IAC 11.7-2-10](#) "Hazardous waste" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 10. "Hazardous waste" has the meaning set forth in [329 IAC 3.1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-10](#))

**[329 IAC 11.7-2-11](#) "Household hazardous waste" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 11. "Household hazardous waste" means hazardous waste:

- (1) generated by a household; and
- (2) exempt from the requirements of the hazardous waste rules at [329 IAC 3.1](#).

(Solid Waste Management Board; [329 IAC 11.7-2-11](#))

**[329 IAC 11.7-2-12](#) "Industrial process waste" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 12. "Industrial process waste" has the meaning set forth in [329 IAC 10-2-95](#).

(Solid Waste Management Board; [329 IAC 11.7-2-12](#))

**[329 IAC 11.7-2-13](#) "Landowner" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 13. "Landowner"** means an owner of real property, as described in the recorded deed and the current county or counties plats. For purposes of this article, the term includes the lessee of the land.

(Solid Waste Management Board; [329 IAC 11.7-2-13](#))

**[329 IAC 11.7-2-14](#) "On-site" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15-2-1](#); [IC 13-19-3-1](#); [IC 13-19-4-10](#)

Affected: [IC 13-30-2](#); [IC 25-31](#); [IC 36-9-30](#)

**Sec. 14. "On-site"** means all areas within the facility boundary.

(Solid Waste Management Board; [329 IAC 11.7-2-14](#))

**[329 IAC 11.7-2-15](#) "Operator" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 15. "Operator"** means the person responsible for managing and overseeing a facility regulated under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-15](#))

**[329 IAC 11.7-2-16](#) "Owner" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 16. "Owner"** means the person who owns a facility required to register under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-16](#))

**[329 IAC 11.7-2-17](#) "Registered facility" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 17. "Registered facility"** means a:

- (1) storage;
- (2) recycling; or
- (3) processing;

facility that is registered under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-17](#))

**[329 IAC 11.7-2-18](#) "Registration" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 18. "Registration"** means the notification to and the approval by the commissioner regarding the



processing or storage of solid waste at the facility that:

- (1) meets the requirements for registration; and
- (2) must register under this article.

(Solid Waste Management Board; [329 IAC 11.7-2-18](#))

**[329 IAC 11.7-2-19](#) "Residue" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 19. "Residue" means, for purposes of this article, any unprocessed alternative fuel.**

(Solid Waste Management Board; [329 IAC 11.7-2-19](#))

**[329 IAC 11.7-2-20](#) "Solid waste" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 20. "Solid waste" has the meaning set forth in [329 IAC 10-2-174](#).**

(Solid Waste Management Board; [329 IAC 11.7-2-20](#))

**[329 IAC 11.7-2-21](#) "Speculative accumulation" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 21. "Speculative accumulation" means the storage before processing or recycling of large quantities of solid waste without a current outlet for the processed or recycled materials. It is a rebuttable presumption that storage of solid waste for more than six (6) months constitutes disposal.**

(Solid Waste Management Board; [329 IAC 11.7-2-21](#))

**[329 IAC 11.7-2-22](#) "Storage" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 22. "Storage" means the retention, containment, or accumulation, on a temporary basis, of solid waste intended for processing in such a manner that the solid waste does not:**

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

**The term does not include speculative accumulation.**

(Solid Waste Management Board; [329 IAC 11.7-2-22](#))

**[329 IAC 11.7-2-23](#) "Waste determination" defined**

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 23. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and**



determine if the waste must be disposed of under the hazardous waste rules at [329 IAC 3.1](#), the PCB rules at [329 IAC 4.1](#), or the solid waste rules at [329 IAC 10](#). The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C, or equivalent methods approved under 40 CFR 260.21 to ascertain the following:

- (1) The waste is a hazardous waste under 40 CFR 262.11 and is regulated under [329 IAC 3.1](#) because of the following:
  - (A) The waste is not excluded from regulation under 40 CFR 261.4.
  - (B) The waste is a listed waste under 40 CFR 261, Subpart D.
  - (C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C.
- (2) The waste:
  - (A) contains regulated amounts of PCBs; and
  - (B) is regulated under [329 IAC 4.1](#).
- (3) The waste is a solid waste and can be disposed of under [329 IAC 10](#).
- (4) The waste is a solid waste and can be processed under [329 IAC 11](#).

(Solid Waste Management Board; [329 IAC 11.7-2-23](#))

### Rule 3. Exclusions

#### [329 IAC 11.7-3-1](#) Exclusions

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The following are excluded from regulation under this article:

- (1) Facilities that hold a valid permit under [329 IAC 10](#) or [329 IAC 11](#) to treat, process, store, or dispose of solid or hazardous waste that are not described in [329 IAC 11.7-1-2](#).
- (2) Processing of uncontaminated and untreated natural growth solid waste and saw dust including the following:
  - (A) Tree limbs.
  - (B) Stumps.
  - (C) Leaves.
  - (D) Grass clippings.
- (3) Facilities permitted under [329 IAC 3.1](#) that store, treat, or dispose of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.
- (4) Processing and burning for fuel of manufactured wood waste for purposes of energy consumption on-site.

(b) If a facility is registered under this article, and accepts waste tires as an alternative fuel, then a registration is not required under [329 IAC 15](#). However, the facility must still comply with storage, operation, closure, and financial assurance requirements under [329 IAC 15](#) for tire processing prior to burning.

(Solid Waste Management Board; [329 IAC 11.7-3-1](#))

### Rule 4. Registration

#### [329 IAC 11.7-4-1](#) Registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 4-21.5-3](#); [IC 13-15-7](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owners or operators of all facilities described under [329 IAC 11.7-1-1\(a\)](#) and [329 IAC 11.7-1-2](#) are required to register, unless excluded under [329 IAC 11.7-3-1](#). A registration is for a fixed term not to exceed five (5) years, unless renewed.

**(b) The registration form must be:**

- (1) filled out completely; and**
- (2) submitted to the commissioner on a form or in a format provided by the commissioner.**

**(c) The commissioner may require the registration to be submitted electronically with an electronic signature.**

**(d) A registration may be submitted electronically via electronic media.**

**(e) The registration must be renewed or modified as follows:**

**(1) Modified when the:**

- (A) process at the facility changes;**
- (B) amounts of alternative fuel specified in subsection (f)(5) change; or**
- (C) location of the facility changes.**

**(2) The renewal form must be submitted at least sixty (60) days before the expiration date of the registration.**

**(f) The registration submission must include the following information:**

**(1) The name of the owner, operator, and landowner, if different from the registered facility owner.**

**(2) Addresses and telephone numbers for the owner, operator, and landowner.**

**(3) The location and address of the facility.**

**(4) The type of facility.**

**(5) The type and maximum amounts, in tons, of alternative fuel that are delivered daily and the maximum amounts of each to be stored on-site and the probable duration of storage in days.**

**(6) Incoming waste testing and screening procedures to ensure that the registered facility is processing solid waste streams that are acceptable for use as an alternative fuel at this registered facility.**

**(7) A plot plan that has a scale, including a bar scale, elevations that correlate with U.S. Geological Survey mean sea level data, north arrow, a map legend, facility boundary, roads, drainage ways, and identification on the plot plan of where the alternative fuel will be stored or processed in:**

**(A) a building, including floor plan;**

**(B) containers;**

**(C) vehicles;**

**(D) tanks; or**

**(E) other proposed storage locations subject to approval by the commissioner.**

**(8) The construction material for all areas where alternative fuel will be:**

**(A) stored; or**

**(B) processed.**

**(9) A detailed description of the:**

**(A) storage;**

**(B) handling;**

**(C) processing;**

**(D) treatment; and**

**(E) final disposition;**

**of the alternative fuel or solid waste generated.**

**(10) The maximum total amount, in tons, of alternative fuel capable of being processed per hour.**

**(11) Other permits from the department for the facility.**

**(12) The date the facility became operational or will be operational.**

**(13) A contingency action plan that specifies the following:**

**(A) An outline of the method or methods of waste disposal to be implemented if the registered facility is unable to operate or process and there is no more remaining storage capacity for the alternative fuel that has been approved in the registration.**

**(B) The maximum amount of alternative fuel as specified in subdivision (5) at the facility at any one (1) time.**

**(C) Emergency response plan for controlling:**

**(i) fire;**

**(ii) explosion;**

**(iii) spills; and**

- (iv) contamination.
- (D) If required, a spill prevention control plan under Section 311(j)(1)(C) of the Clean Water Act.
- (E) Areas where alternative fuels are contained or stored.
- (F) A plot plan of the registered facility. The plot plan must include the information required in subdivision (7).
- (G) A United States Geological Service (USGS) map that identifies the facility location and any access roads.
- (H) Telephone numbers for the fire department responsible for responding to a fire or emergency at the registered facility.
- (14) A description of any residue, leachate, or wastewater resulting from the processing or storing of alternative fuel. Applicable surface water controls under [327 IAC 15-6](#) must be specified.
- (15) Alternative fuel handling and waste housekeeping procedures for the:
  - (A) storage;
  - (B) waste processing;
  - (C) loading; and
  - (D) unloading;areas.

(g) The owner or operator must sign and submit the following certification with the registration submission: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(h) The commissioner or a designee may deny, revoke, limit the length of, or place additional conditions on a registration if the commissioner determines one (1) or more of the following:

- (1) The commissioner, under [IC 13-15-7](#), has revoked the applicant's previous registration under this article.
- (2) The registration submission is incomplete.
- (3) There is a violation of a requirement of this article or a condition of the registration.
- (4) There is a failure to disclose all relevant facts in obtaining a registration under this article.
- (5) There is a misrepresentation made in obtaining a registration under this article.
- (6) The applicant fails to meet the requirements for a registration.
- (7) The owner or operator fails to correct a condition as agreed to in an agreed order with the department or commissioner's order, or within the time established in the agreed order or commissioner's order, come into compliance with:
  - (A) the registration;
  - (B) this article; or
  - (C) both.

(i) The issuance of a registration does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(j) A registration is not transferable. A new owner or operator:

- (1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and
- (2) may operate the facility in the interim.

(Solid Waste Management Board; [329 IAC 11.7-4-1](#))

#### [329 IAC 11.7-4-2](#) Transition for submitting registration

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Sec. 2. (a)** All owners or operators of an existing facility that are required to register under this article must submit a registration form within sixty (60) days after the effective date of this article. These facilities may continue to operate unless the registration is denied.

**(b)** No new facility that is required to register under this article may operate without a registration approval.

*(Solid Waste Management Board; [329 IAC 11.7-4-2](#))*

## **Rule 5. Storage Requirements**

### **[329 IAC 11.7-5-1](#) Storage requirements for alternative fuels**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Affected:** [IC 13-30-2](#); [IC 36-9-30](#)

**Sec. 1. (a)** All registered facilities must store alternative fuels or residues in a manner that does not threaten human health and protects the environment. The following are examples of adequate storage:

- (1) A building that is weather tight with impervious floors.
- (2) A container capable of being enclosed.
- (3) A completely enclosed vehicle.
- (4) Tanks.
- (5) Other storage provisions as approved by the commissioner.

**(b)** Speculative accumulation of alternative fuel is not allowed. Facilities registered under this article must engage in only legitimate reuse or recycling as demonstrated by the following:

(1) The owner or operator of the registered facility must have a plan to reuse or recycle the alternative fuel that shows the following:

(A) Alternative fuel may be stored for periods exceeding six (6) months if there is a demonstrated need.

(B) The alternative fuel or any residue is stored in accordance with this rule and in a manner reflecting its value as a commodity.

(2) The registered facility must maintain records of alternative fuel received at the facility and alternative fuel processed at the facility, recorded in estimated tons in a consistent manner at least daily, and include the following:

(A) BTU value for each waste stream.

(B) The total amount of residue shipped from the facility for disposal.

(3) Shipping papers and manifests as applicable for shipments of alternative fuel and residue shipped to or from the facility shall be maintained by the facility for a period of three (3) years.

**(c)** Storage, including the retention, containment, or accumulation of alternative fuel or residue, on a temporary basis must not:

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

It is a rebuttable presumption that storage of alternative fuel or any residue for more than six (6) months constitutes discarding and disposal.

*(Solid Waste Management Board; [329 IAC 11.7-5-1](#))*

## **Rule 6. Operational Requirements**

### **[329 IAC 11.7-6-1](#) Operational requirements**

**Authority:** [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

**Sec. 1. (a) A facility that processes or stores alternative fuel or residue must have the following:**

**(1) An appropriate surface or pad for processing, such as concrete or asphalt, that will control spills and any liquids or leachate. Examples of an appropriate surface would be concrete or asphalt. Facilities that are registered under this article that are only processing uncontaminated wood or plastic are not required to process on a pad.**

**(2) Adequate measures in place to control fire hazards, and equipment available to control fires. The contingency action plan required under [329 IAC 11.7-4-1\(f\)\(13\)](#) must be submitted to the local fire department that services the area.**

**(3) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.**

**(4) Access control to the facility.**

**(5) A sign at least one (1) foot high by two (2) feet wide prominently displayed by the door or entrance to the facility and legibly containing the following information:**

**(A) The name of the facility.**

**(B) The IDEM registration number.**

**(C) The name and phone number of a designated emergency contact person.**

**(6) Adequate control of the following:**

**(A) Dust.**

**(B) Odors.**

**(C) Wastewater.**

**(D) Vectors.**

**(E) Litter.**

**(F) Leachate.**

**(7) Monitoring of incoming alternative fuels. Any waste that the facility is not registered or permitted to receive for processing must be isolated and removed from the facility.**

**(b) Any outside container or vehicle that is used for storage must be completely closed at the end of the operating day unless other storage provisions are approved by the commissioner.**

**(c) The owner or operator shall record and retain at the registered facility, or in an alternative location approved by the commissioner, all records, reports, or audits required by this article until certification of closure is deemed adequate by the commissioner under [329 IAC 11.7-8-1\(e\)](#). The following information must be retained:**

**(1) A paper copy or an accessible copy of the electronically submitted registration submission.**

**(2) A contingency action plan as required under [329 IAC 11.7-4-1\(f\)\(13\)](#).**

**(3) The records required under [329 IAC 11.7-5-1\(b\)\(2\)](#).**

**(4) The training log required under subsection (f).**

**(5) The results of any waste determination tests on the residues generated by the registered facility.**

**(d) The following must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner:**

**(1) All records required by this article.**

**(2) All test results of the alternative fuels received and residues generated by the registered facility and disposed.**

**(e) No hazardous waste that is regulated by [329 IAC 3.1](#) shall be processed at any registered facility, unless the facility is permitted under [329 IAC 3.1](#) to process hazardous waste.**

**(f) Employees must be trained on safety, emergency, and operational procedures for the facility. A training log must be kept at the registered facility for five (5) years stating the following:**

**(1) The name of the employee.**

**(2) Training topics.**

**(3) Hours of training.**

*(Solid Waste Management Board; [329 IAC 11.7-6-1](#))*

## Rule 7. Disposal

### [329 IAC 11.7-7-1](#) Disposal

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. Persons, generators, owners, or operators disposing of alternative fuel or residue must make a waste determination and dispose as applicable at either of the following:

(1) A facility permitted in Indiana under the following:

(A) [329 IAC 3.1](#).

(B) [329 IAC 4.1](#).

(C) [329 IAC 10](#).

(D) Solid waste processing facilities permitted under [329 IAC 11](#).

(E) [329 IAC 13](#).

(2) A facility registered under this article.

(2) An appropriate facility located out of state.

(Solid Waste Management Board; [329 IAC 11.7-7-1](#))

## Rule 8. Closure

### [329 IAC 11.7-8-1](#) Closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting alternative fuel.

(b) All alternative fuel or residue must be:

(1) removed from the:

(A) building;

(B) containers;

(C) storage areas;

(D) tanks; and

(E) vehicles; and

(2) disposed of according to [329 IAC 11.7-7-1](#);

within sixty (60) days of the registered facility no longer accepting alternative fuel.

(c) Any soil or groundwater contamination resulting from the storage or processing of alternative fuel that is above RISC industrial levels must be contained, removed, and disposed of according to [329 IAC 11.7-7-1](#). This requirement does not include any contaminants that the owner or operator can document were existing before the storage or processing of alternative fuel.

(d) A registered facility must be certified closed under subsection (e) after all solid waste is removed and disposed.

(e) The owner or operator must send a certification statement to the commissioner stating that the requirements of this section have been met within thirty (30) days after completion of the closure.

(Solid Waste Management Board; [329 IAC 11.7-8-1](#))

## Rule 9. Financial Assurance

**329 IAC 11.7-9-1** Financial assurance for cleanup and closure

Authority: [IC 13-14-8-7](#); [IC 13-15](#); [IC 13-19-3](#)

Affected: [IC 13-14](#); [IC 13-30-2](#); [IC 36-9-30](#)

Sec. 1. (a) All owners or operators that are required to register under this article shall establish financial assurance with the department for closure of the registered facility. The financial assurance must be provided as a surety bond as specified in subsection (c) in the amount that will provide for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that will provide for closure is determined by the maximum amount in tons of alternative fuel or residue that may be stored at the facility and that exceeds ten thousand (10,000) tons at any one (1) time, multiplied by twenty dollars (\$20) per ton.

(c) The surety bond is established as follows:

(1) On forms:

- (A) provided by the commissioner; or
- (B) as approved by the commissioner.

(2) All surety bonds must contain the following:

- (A) The establishment of minimum bond amount determined by subsection (b).
- (B) Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of [329 IAC 11.7-8-1](#).
- (C) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.
- (D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

- (A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and
- (B) authorized to do business in Indiana.

(4) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) The owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. The trust fund must be established in accordance with the following:

- (A) On forms provided by the commissioner or forms as approved by the commissioner.
- (B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.
- (C) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.
- (D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.
- (E) The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.
- (F) The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and a state of Indiana agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

- (1) The IDEM registration number, name, and address.
- (2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.



(e) An owner or operator shall do the following:

- (1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond shall be deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.
- (2) Reestablish financial assurance within sixty (60) days after such an event. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in [IC 13-14](#) and [IC 13-30](#), any failure to obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be:

- (1) deemed to endanger human health or the environment; and
- (2) grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article.

(Solid Waste Management Board; [329 IAC 11.7-9-1](#))

#### [Notice of Public Hearing](#)

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